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Professional Conduct and Advocacy*

This book grew out of a course of Lectures delivered to apprentices-at-law under the auspices of the Bar Council in the year 1940. Though the main scheme of the Lectures has been retained, this second edition of the book has been thoroughly revised and substantially enlarged. In its present form the book is certain to become a classic on the subject at least so far as India is concerned. Mr. Krishnaswami Aiyar, the learned author, has been one of the leading members of the Madras Bar. Further, he has lived among the giants and he belongs to a generation of outstanding personalities at the Madras Bar. Consequently, though he has drawn largely and rightly from well-known books relating to the British Bar and its traditions, he has also extensively drawn from his own experience and intimate knowledge of the world of the law with its trinity,—the client, the Advocate and the Judge. The book impresses in a very convincing and interesting way on the reader, whether he be an Apprentice or an Advocate newly enrolled or even an Advocate of some years' standing, the high standards which have to be maintained by members of the Legal Profession. The great value of the book lies in its practical approach to the concrete questions which are bound to arise in the daily life of an Advocate. It is often forgotten that virtue consists in a bundle of negatives. It is not sufficient to tell the novice to keep up high standards. It should be made clear to him what he ought not to do more than what he ought to do. This book does that in an eminent degree in its successive chapters dealing with professional life in its different aspects, *e.g.*, meeting clients, preparation of a case, conduct in Court, duty to the profession, to the Court, to the client, to the opponent and to the State. If one looks up the index to the book (which by the way is exceptionally informing) one will discover the staggering number of things which the lawyer should *not* do.

In spite of protestations now and then from a few leaders, it must be confessed that generally the high nature of the calling of a lawyer is not adequately realised. It is high time that lawyers recognised that it is their duty to be the "custodians of civilisation" and to take their part in the political and public life of the country as well as in the administration of justice. This topic is prominently dealt with in two Chapters (I and XVIII).

The author does not content himself with being merely admonitory. He has very helpful suggestions to make to the Bar as well as to the Bench. Appendix I to the book entitled "The Judge" is very thoughtful and useful. There is a great deal to be said in favour of the learned author's comment on the increasing tendency in Court to be content with the citation of a decided case for a mere precedent without any attempt to examine its underlying principles.

*Lectures delivered by Rao Bahadur K. V. Krishnaswami Aiyar to the apprentices at law at the instance of the Madras Bar Council, 2nd Edition, 1945. Publishers: The Oxford University Press.

Likewise, his observations on some of the problems facing the future of the lawyer consequent on overcrowding and competition (Chapter XVIII) are well worth examination at the hands of the Bar Council and of the leaders of the profession. It is not possible to agree with Sir Maurice Gwyer when he appears to suggest in his foreword that useful purpose will be served if the standards of law examination are raised further. The truth is not that lawyers at present are ill-equipped but there is not enough work for the ever increasing number of Advocates year by year. On this subject the remarks and suggestions made by the learned author are far more direct and helpful. The idea of partnerships among lawyers in particular merits serious consideration.

The author is quite alive to the fact that in the future, more or less immediate, the lawyer stands in need of equipment not only in matters strictly legalistic but also in other branches of knowledge. Likewise he foresees the opportunities which the lawyer is likely to have to extend his sphere of activity by taking part in the proceedings before the numerous administrative and quasi-judicial tribunals which are bound to come into existence. The following extract from one of the addresses at the recent proceedings of the Canadian Bar Association is worth pondering:

"Upon any view, realistic or liberal, the Bar must recognize that both for the practice of law and for leadership in citizenship in the new world the profession must be educated more widely and more deeply. Thus far the profession in Canada has exercised its controlling influence largely in the direction of a vocational training with constant emphasis on the "practical" subjects and with little patience for historical, comparative or cultural subjects. Such an attitude and such an education simply will not do, in a day when government is intervening in all spheres of human relations, and when new ideas of the function of law are emerging. It will not do for a day when the workaday lawyer's narrow round is giving way to activities requiring knowledge of social, scientific and economic forces. Still less will it do for the lawyer called, as so many are, to the aid and direction of great movements.

"The complexity and diversity of the matters now involved in the discharge of a lawyer's duties are such as to require that he have the widest possible understanding of all phases of social life and the utmost catholicity of interests. . ."

The printing and get up of the book are superb. Every one will endorse Sir Maurice in saying that this is "a book which should be in the hands of every law student and young practitioner; and many older practitioners would derive much benefit from studying its pages".

P. V. Rajamannar.

Section 12, Indian Limitation Act and Appeals Under the Letters Patent, (Appellate Side).

By

R. S. Srinivasacharya, Advocate, Madras.

Does section 12 of the Limitation Act apply to appeals under the Letters Patent, taken from the Appellate Side of the High Court? The answer has been given in the negative by all the Indian High Courts which have dealt with the matter except Madras which has given only one decision in the matter and has, in that decision, given the answer in the affirmative. It is submitted, with respect, that the view of the other High Courts is clearly correct.

The relevant provisions of law are only two. Rule 51 of the Appellate Side Rules (Madras) provides a period of 30 days for appeal. Order XLI-B (Madras) of the Civil Procedure Code, declares in rule 1 that it "shall not be necessary to file . . . copies of the judgment and decree". In passing, the striking contrast afforded by the rule on the Original Side with respect to appeals therefrom may be referred to, Order 27, rule 1 (O.S. Rules).

From very early times, the High Courts with rules similar to the Madras rule have consistently been holding that section 12 of the Limitation Act or its corres-

ponding provision cannot be applied to such appeals. The earliest case is from Allahabad and of the year 1880; a Bench of four Judges considered the matter to be so plain that, while giving the negative answer, they considered it unnecessary to give any reasons. *Fazal Muhammad* v. *Phul Kuar*[1]. This decision was applied in *Naubat Ram* v. *Haram Das*[2] and followed in *Dyal Singh* v. *Budha Singh*[3], *Fatteh Muhammad* v. *Chothu Ram*[4], *Jog Dhian* v. *Hussain*[5], and *Mukund Mahto* v. *Niranjan Chakravarty*[6].

The contrary view is to be found in a decision of Madras of 1923. The decision appears to have been given *ex-parte* and does not appear to have been fully reported, short notes of the decision, alone, being available.[7] Two reasons are given for the decision: (1) the language of clause 44 of the Madras Letters Patent, (2) the amendment of sction 29 of the Limitation Act made in 1922, making certain sections of the Act of which section 12 is one applicable to cases provided for by "special or local law".

With respect, the first of the reasons given does not have much force; clause 44 of the Letters Patent has been, throughout, substantially in its extant form and no one had ever thought that its presence could affect the position, one way or the other. The second ground looks more plausible, but, is equally, unacceptable. It has been considered by the Patna High Court in the 1934 case referred to *supra*, where the dictum of Cunliffe, J., of Rangoon, occurring at p. 395 of *Ganny* v. *Russall*[8], has been followed and in *Jog Dhian* v. *Hussain*[5], which followed the Patna ruling. As observed by Cunliffe, J., the term "special law" can be properly applied only to provisions enacted by legislative authority, and rules framed by High Courts under the Letters Patent can hardly, without doing violence to language, be said to attract section 29 of the Limitation Act. *Cf.* description in Hailsham of the grant of Letters Patent as a matter of "the King's Grace". (Vol. 24, Para. 529).

The point requires little elaboration, but, nevertheless, may be briefly considered. There are two possible points of view. One and, perhaps, the easier is to regard rule 51 as enacting a "condition precedent", absolute and exacting in its incidence as was held in relation to sec. 9 (1) of the Provincial Insolvency Act:—*Chenchuramana* v. *Arunachalam*[9], and, *not* as prescribing a "period of limitation" liable to be affected by other provisions of the Act.

But, a better and more satisfactory method of approach is to express concurrence with the view long adumbrated in India that the provisions of the Limitation Act do not, *proprio vigore*, apply to periods of limitation other than those provided for in the First Schedule of the Limitation Act itself. It is in that view, that so early as in the year 1876, the Bombay High Court refused to apply that Act to the case before it which was a claim made by an Attorney of the Court, the matter having been provided for, not by the Act, but, by Rules of the Court. This was in *Abba Haji Ismail* v. *Abba Thara*[10], it was followed in *Wadia Gandhy & Co.* v. *Purushotam Sivji*[11], and *Lakhimani Dassi* v. *Dwijendra Nath Mukerjee*[12], the Allahabad High Court refused to apply section 5 of the Limitation Act to an appeal filed under the Letters Patent, but, filed beyond the period mentioned in the appropriate rule, *Baijnath* v. *Dulari Hajjam*[13]. And in the same year, the Judicial Committee, while applying section 12 of the Act to an Original Side Appeal of the Rangoon High Court, observed that the case of *Fazal Muhammad* v. *Phul Kuar*[14], was different, because the case was one provided for by a rule under the Letters Patent and *not by any*

1. (1879) I.L.R. 2 All. 192 (F.B.).
2. (1886) I.L.R. 9 All. 115 at 118 (F.B.).
3. (1921) I.L.R. 2 Lah. 127.
4. A.I.R. 1921 Lah. 237.
5. (1935) I.L.R. 16 Lah. 448 (F.B.).
6. A.I.R. 1934 Pat. 353.
7. 44 M.L.J.S.N. p. 15.
8. (1930) 8 Rang. 380 at p. 395.
9. (1935) I.L.R. 58 Mad. 794 (F.B.).
10. (1876) I.L.R. 1 Bom. 253.
11. (1907) I.L.R. 32 Bom. 1.
12. (1918) I.L.R. 46 Cal. 249.
13. (1928) I.L.R. 50 All. 865.
14. (1879) I.L.R. 2 All. 192 (F.B.).

Article as was the case before them by the Limitation Act. The inevitable inference follows, *viz.*, that the provisions of the Indian Limitation Act apply only to cases provided for by that Act, itself, and not to cases provided for, elsewhere, *e.g.*, by rules under the Letters Patent. It is in the same view that the Madras High Court has framed special rules applying section 5 of the Limitation Act to cases falling under Order 9, rule 13, and is proposing a similar application to cases coming under Order 41, rule 21 of the Code.

It has only to be added that the 16 Lah. case and the Patna case referred to *supra* were later than the amendment of section 29 of the Limitation Act made in 1922 and clearly decided that that amendment in no way affected the position established in *Fazal Muhammad* v. *Phul Kuar.*

The point arose pointedly, in Madras, in a recent appeal under the Letters Patent, but, was, unfortunately, left undecided. It is hoped that when the point next arises, Madras would fall into line with the other High Courts.

GOTRA AND PRAVARA NAMES.

By

R. S. Sankara Aiyar, Retired District and Sessions Judge.

The Draft Hindu Code section 5 (*f*) says that Gotra and Pravara have the same meaning as in the Hindu Law. It is commonly understood that Gotra name gives the name of the original parent, or male founder of the family. Pravara names are similarly understood to be the names of illustrious descendents. When a man announces himself before a Guru, he says: "I am of such gotra with such and such pravara and I am called by such and such name".

On the surface it looks very simple and free from possibility of confusion. But when the details regarding Gotra origin and Pravara names are examined, a most baffling situation is found. The matter is here presented on the basis of the authority followed in South India, the Vaidyanatha Deekshitheeyam.

In practice it assumes that all families of whatever subcaste professing the same gotra, must be agnatic descendants of a first father bearing the gotra name. In other words it is taken for granted that no two or more individuals ever existed with the same name, so far as gotra rishis and pravara rishis are concerned.

The provision in the clause about same gotra, *or* same pravara seems to grant that same gotra can have different pravaras, and, same pravara relate to different gotras. As a fact such is the case in a few instances as will be shown later on. But the main questions are (1) "Were there not many gotra rishis and pravara rishis with the same name" (2) if there were, then are we justified in declaring two families which are otherwise unconnected, to be agnates on the sole ground that both families claim as their gotra rishi, the same name. (3) If such an assumption is unfounded then is there justification for keeping in force by legislative authority what is demonstrated to be a purely fanciful prohibition. (4) Should not the Legislature declare that sagotra and samana pravara marriages shall not be invalid so long as the parties are not gotraja sapindas?

We are generally assuming and acting as if the name of a gotra rishi indicates only one human being. In other words we assume that so far as gotras are concerned, no two or more gotra rishis bearing the same name ever existed. It is on this footing that the Bezwada Trilinga Orthodox Sabha resolved that prohibition of sagotra marriages is supported by the eugenic principle discouraging consanguine marriages.

It is said that a pravara rishi is a very distinguised descendant of the gotra rishi. Prohibition of alliance where both gotra and pravara names are identical may be founded on the assumption of an original common ancestor. But, the prohibitions are sought to be imposed even where the gotras are different with a

a common pravara, and where the gotras are the same and the pravaras are different. Some suggest that the gotra name indicates the guru, whom the original ancestor sought and at whose feet he learnt. This view seems also to assume that the gotra name indicates only one individual and that there were no guru asramas where the guru had the same name. Another view is that there are many rishis of the same names and we must go only to samana pravara and samana gotra for exclusion. Even this assumes that as to the samana pravara rishis there was no duplication or triplication of common names. When we investigate the matter more closely, we find it difficult to find any reasonable basis for any of these prohibitions. The only prohibition that can be sustained is the marriage of sagotra consanguine (pithru-varga-) sapindas who observe mutual death pollution. All other prohibitions now current seem to be arbitrary and without any foundation in reason.

According to Vaidyanatha Deekshitheeyam gotras are distributed into five main groups:—(*a*) Eka-Rishi Pravara; (*b*) Dwi-Rishi Pravara; (*c*) Triya-Rishi Pravara; (*d*) Pancha-Rishi Pravara and (*e*) Sapta-Rishi Pravara (having as pravara rishis only one, or two, or three, or five, or seven names).

In each group there are main heads called gotra prajapathi. Each such Prajapathi is the source of one or more gotras. The gotra prajapathy name is not always single. The same name or names appear in more than one of the main groups, *i.e.*, pravara rishi groups. The same name or names also appear in many of the Prajapathy groups. The same name or names also appear in pravara rishi names.

Single Pravara Rishi Group:

1. BRIGU PRAJAPATHY:—

Gotras	*Pravaras*
Mithrayu, Rowshtyayana, Sapindina	Yadhryaswa
Sunaka, Gathsamada, Yagnapathy	Gatsamada or Sownaka.

II. YASISHTA PRAJAPATHY:—

Gotra	*Pravara*
Vasishta, Vythalakavi, Raki	Vasishta

III. AGASTHYA PRAJAPATHY:—

Gotra	*Pravara*
Aidhmavaha, Vaisaladya, Sphalayana, Agasthya	Agasthya.

Two Rishi Pravara Group:—

BRIGU PRAJAPATHY:—

Gotra	*Pravara.*
Sunaka, Gatsamada, Yagnapathy	Bhargava-Gatsamada

VISWAMITHRA PRAJAPATHY:—

Lohitha, Kundyakya, Chakravarnayana	Viswamithra-Ashtaka.
Purana, Aindrakowsika, Hiranyarethasa, Sowvarnarethasa, Dhrithakowsika, Kathaka	Viswamithra plus Gotra name.

The names Sunaka and Gatsamada appear as gotra names in both one Rishi Pravara and Two Rishi Pravara under Brigu Prajapathy. Sunaka also appears as Pravara Rishi for 4, 5, 6, of one Rishi Pravara. Gatsamada appears also as Pravara Rishi in 4, 5, 6 of one Rishi Pravara and 1, 2, 3 of two Rishi Pravara under Brigu Prajapathy. In the two Rishi Pravara, the Gotra Prajapathy "Viswamithra" appears also as Pravara Rishi in all ten Gotras under Viswamithra Prajapathy. The other name is "Ashtaka" for Nos. 1, 2, 3 and the Gotra name for the remaining seven. Similar duplication will be noticed in others also. From the foregoing alone it is obvious that among Pravara Rishis, many persons had identical names. The assumption now made that the name by itself proves descent from one common ancestor is shown to be absolutely unfounded.

Three Rishi Pravaras.—In this Group the Gotra Prajapathy names are in some cases many. Some names come in more than one Prajapathy group. As the great majority of gotras are in this main group the names of the gotras are not now given. The names of gotra prajapathys with the number of gotras coming under that prajapathy are alone given. The same will be the case also with the Five Rishi main group.

Prajapathy	*No. of Gothras*
Angiras	26
Attri	16
Brigu	28
Vasishta	13
Viswamithra	30
Bharadwaj-Angiras	9
Angiras Gowthama	15
Gowthama, Angiras, Vamadeva	8
Vasishta, Angiras	4
Brigu Viswamithra	1
Kasyapa Marichi	10
Vasishta, Athri, Agasthya	13
Vasishta, Kasyapa, Angiras	2
Bharadwaja, Viswamithra, Brigu, Angiras	2

FIVE RISHI PRAVARA GROUP:—

Prajapathy	*No. of Groups*
Brigu	11
Angiras, Gowthama	1
Gowthama, Angiras	3
Bharadwaja Angiras	7
Bharadwaja Viswamithra, Brigu, Angiras	1

SEVEN RISHI PRAVARA GROUP—

Prajapathy	*No. of Groups.*
Agasthya	1
Brigu, Viswamithra	1

In some groups of gotras, there are alternative pravara groups. An instance would have been already noticed in gotras 4, 5, 6, of Brigu Prajapathy in one Rishi Pravara main. Examples may be taken from the three Rishi Pravara Group. In the Three Rishi Pravara under Angiras-Gowthama Prajapathy, the Gotra Vamadeva has the choice of any one of the three groups of thraya Rishis. They are (1) Angiras-Vamadeva-Gowthama; (2) Angiras Vamadeva-Barhaduktha; and (3) Angiras-Gowthama-Vamadeva.

In the three Pravara Group under Goutama-Angiras Prajapathy the three Gotras (i) Gargah, (ii) Sambharayana and (iii) Sakeenaya have the choice of any set of four Three-Rishi Groups:—(1) Angirah-Sainya-Gargah, (2), Angiras-Gargah, Sainya, (3) Bharadwaja-Garga-Sainya, and (4) Angiras-Taithireya-Kapibhuva. These three Gotras will really be gotras with Samana Pravara, but if each selects a different one of the four, they will appear to be different Gotras with different Pravaras.

An analysis of the Pravara Names shows that some names are common to many Gotras. For instance "Angiras" appears as Pravara Rishi in sixty-seven Gotras of Three-Rishi Pravara Group and in twelve Gotras of the Five-Rishi Pravara Group. "Bhargava" appears as Pravara Rishi in 3 gotras of Two-Rishi Pravara, 30 gotras of Three-Rishi Pravara and 10 Gotras of Five-Rishi Pravara. "Viswamithra" appears in 45 Gotras. "Gowthama" appears in 26 Gotras. "Vasishta" appears in 19; "Agasthya" in 17; "Chyavana in 17 Gotras; "Bharadwaja" in 16; and so on.

In Bharadwaja-Angiras Prajapathy Group of Three Rishi Pravara, Kapila Gotra has Viswamithra as one of the Pravara Rishis. Again under Vishwamithra Prajapathy in the Three Rishi Prajapathy Group under Gotra Chakavarnayana, Angiras and Ashtaka appear as Pravara Rishis. These names Visvamithra, Angiras, Ashtaka, among the Pravra Rishis must certainly be different individuals from those of the same name appearing as Gotra Prajapathies, Gotra Rishis, or Pravara Rishis.

From the above, it is crystal clear that one cannot justly infer a common ancestry from the gotra and pravara names being the same.

Suggested Rules.—(*i*) Marriages between Sa-gotras, and or, or Samana Pravaras, are valid, provided the parties are not within seven degrees in direct lineal male ascent from a common male ancestor. The degrees are to be counted from and including either party upwards to the ancestor for seven generations.

(2) Marriages between parties within the seven degrees as in clause (1) are void.

Note:—No special mention need be made as to "Sacramental marriages" at all. The rule covers both such and Registered Marriages.

The following amendments may be suggested:—

Explanation.—(1) An adoption from another Gotra breaks the continuity of consanguinity.

(2) Adoption into a different Gotra will not evade the bar of consanguinity within seven degrees.

Illustration.—(1) Of three brothers A, B, C, B and C have great-grandsons. *A's* grandson has no son and adopts a son *D* from a different Gotra. A daughter or son of *D* may marry a son or daughter in the line of *B* and *C*.

(2) In the above illustration (1) *B's* great-grandson is given in adoption in a different Gotra. The adopted son's son or daughter cannot marry a daughter or son in his natural family.

(3) *A's* grandson adopts a brother of *B's* great-grandson That adopted son's son or daughter cannot marry a daughter or son in the line of *B* or *C*. Consanguine relationship is not broken by the adoption.

SUMMARY OF ENGLISH CASES.

In re Wood, Skinner & Co., Ltd., (1944) 1 Ch. 323.

Company—Winding up—Payment or provision for payment of debts and preference share capital—Distribution of remaining assets—Preference and ordinary shares—Rights.

A clause in the memorandum of association of a company after providing for the division of the capital of the company into preference and ordinary shares conferred a right to a fixed cumulative dividend of 6 per cent. per annum on the capital paid up on the preference shares and to *rank* both as regards dividends and capital in priority to the ordinary shares. At the date of voluntary liquidation of the company dividends were considerably in arrears. On a construction of the memorandum of association,

Held, that the preference shareholders, had there been any surplus after repaying capital on both preference and ordinary shares would be entitled to participate *pari passu* with the ordinary shareholders in the distribution of the surplus assets. The words "*rank in priority to the ordinary shares*" are intended to cover winding up so far as capital is concerned but so far as dividends are concerned it refers to dividends in the strict sense of the word, *i.e.*, while the company is a going concern. In the context of this case, the word "dividends" is not exchangeable with arrears of dividend.

RELIANCE PERMANENT BUILDING SOCIETY *v.* HAROOD STAMPER, (1944) 1 Ch. 362.

Building Societies Act (1939), *section* 10—*Power of sale—Exercise of—Duty to realise best price—Fiduciary liability.*

A mortgagee exercising his power of sale, of course, sells primarily for his own benefit. If the mortgagee exercises his power of sale *bona fide* for the purpose of realising his debt and without collusion with the purchaser, the Court will not interfere even though the sale be very disadvantageous, unless the price is so low as in itself to be evidence of fraud. A mortgagee exercising his power of sale is not (except as to the balance of the purchase money after a sale) a trustee for the mortgagor even if the mortgage is in the form of a trust for sale. But the obligation which lies on a building society mortgagee selling under its power of sale is similar to that of a fiduciary vendor. Section 10 of the Building Societies Act (1939) was intended to add the building society mortgagee to the class of persons who are counted as fiduciary vendors. A fiduciary vendor must not think of himself at all. He is acting for the benefit of others. He must use reasonable diligence in the manner of the sale and it is his duty to obtain the best consideration in money that can reasonably be obtained. A building society mortgagee may however consult its own convenience as regards the time of sale. Their is no duty on the society to "nurse" the property. Having made up its mind to realise its security it is exactly in the same position as that of a trustee vendor under an obligation to effect a sale at once. The society has a wide discretion regarding the mode of sale, *i.e.*, the mortgagee may sell the property either as a whole or in lots, by public auction or by private contract, subject to such conditions respecting title or evidence of title, or other matter, as he thinks fit, with power to vary any contract for sale, to buy in or rescind contracts and so forth. Lastly the society like any other mortgagee is not answerable for any involuntary loss happening in or about the exercise or execution of the power of sale.

COMPTON, *In re* : POWELL *v.* COMPTON, (1944) 1 Ch. 378.

Will—Bequest for trust for education of descendants of three named persons—Valid charitable bequest.

A trust for education of the descendants of three families (including twenty-eight descendants at the time of the testator's death) is wide enough to constitute a valid educational trust. Even as a gift in trust for poor relations it is a valid charitable gift.

SOUTHGATE BOROUGH COUNCIL *v.* WATSON, (1944) 1 K.B. 541 (C.A.).

Rent Restrictions Act—Protection under—Not available to refugees accommodated in house requisitioned under emergency powers and paying rent for it.

A competent authority who has requisitioned a house under the emergency powers has no power under the Defence Regulations to create a tenancy, turning himself into a landlord and turning into a tenant the person who was put into possession of the house because he had lost possession of his own house by enemy action. Such a person cannot resist a claim for possession by the authority by asserting the right of a '*tenant*' to remain in possession under the Rent Restrictions Act.

REX *v.* I. C. R. HAULAGE, LTD., AND OTHERS. (1944) 1 K.B. 551 (C.A.).

Company—Conspiracy to defraud—Company if can be indicted.

A limited company can be indicted for a conspiracy to defraud. Where in any particular case there is evidence to go to the jury that the criminal act of an agent including his state of mind, intention, knowledge or belief is the act of the company and, in cases where the presiding judge so rules, whether the jury are satisfied that it has been proved, must depend on the nature of the charge, the relative position of the officer or agent and the other relevant facts and circumstances of the case.

JAMES CLARK (BRUSH MATERIALS), LTD. *v.* CARTERS (MERCHANTS), LTD., (1944) 1 K.B. 566.

Arbitration—Award—Error of law—When award can be set aside or remitted for reconsideration.

Where parties choose to go to arbitration—and more especially where they arbitrate before a lay arbitrator and agree to accept his decision, and they do not ask for a case to be stated on a point of law which arises during the arbitration—as they are entitled to do—they cannot complain if they get something which may not appear to them to be justice unless they substantiate the very stringent grounds on which an award can be remitted, or set aside for error of law appearing on the face of it. The facts stated in the award must be taken as they stand and no inferences or suspicions as to facts in the mind of the Court are sufficient to confer jurisdiction to set aside or remit the award for an error of law based on such facts.

HOLMAN *v.* GEORGE ELLIOT & CO., LTD., (1944) 1 K.B. 591 (C.A.).

Practice—Writ—Discretion of Court to extend time for service—R. S. C., Order 64, rule 7.

There is a discretion in the Court under Order 64, rule 7 to enlarge the time fixed for the validity of a writ under Order 8, rule 1 of the Rules of the Supreme Court.

[The Court of Appeal in *Battersly* v. *Anglo American Oil Co.*, (1944) 2 All.E.R. 387 (C.A.), refused to follow this decision and the conflict is left to be determined by the House of Lords.]

DANZIGAR *v.* THOMPSON AND OTHERS, (1944) 1 K.B. 654 : (1944) 2 All.E.R. 151.

Landlord and tenant—Written agreement for letting—"Tenant" can lead oral evidence that he was agent or nominee of another.

Evidence that a person described as a tenant in a written agreement for letting is only an agent or nominee of another is admissible. The description "tenant" does not negative agency. It means the person "who by this contract becomes liable to the obligations and entitled to the rights which this contract allots to the tenant" and such a description is not inconsistent with a person so described being an agent.

MAITLAND *v.* RAI SBECK AND HEWITT, (1944) 1 K.B. 689 (C.A.) : (1944) 2 All.E.R. 272.

Tort—Nuisance—Accident to lorry by collision with omnibus owing to rear light of lorry going out—Obstruction to highway—Liability.

If a person sustained an accident for which he is in no way responsible, the time may come when failure to take some appropriate steps on his part will render him liable for maintaining a nuisance to the highway. But it cannot be said that a nuisance is created *ipso facto* and immediately if an accident causes an obstruction. A person using a highway is entitled to use it in a reasonable manner and to expect other people to do the same, but accidents on the highway happen even when both parties have been reasonable and neither has misused the highway. If damage arises in those circumstances the person injured must put up with it. *Ware* v. *Garston Haulage Co.*, (1944) 1 K.B. 30, distinguished.

ADEAL MUHAMMAD ELDABBAH *v.* ATTORNEY-GENERAL OF PALESTINE, (1942) 2 All.E.R. 139 (P.C.)

Criminal trial—Witnesses named in indictment—Discretion of prosecuting counsel to examine or not—Practice of tendering such witnesses for cross-examination.

The prosecutor has a discretion as to what witnesses should be called for the prosecution and the Court will not interfere with the exercise of that discretion, unless perhaps, it can be shown that the prosecutor has been influenced by some oblique motive. If the prisoner called such witnesses, the witnesses should be considered his own. It should however be a general practice of prosecuting counsel, if they find no sufficient reason to the contrary, to tender such witnesses for cross-examination. If need be, the Court has the right of its own motion to call upon persons to give evidence.

ATTORNEY-GENERAL *v.* LLOYD'S BANK, (1944) 2 All.E.R. 157 (K.B.D.).

Income-tax Act (1918), *section* 30—*Penalties for making false returns—Scope.*

Though the false statements of the assessee's total income did not in fact give rise to any larger deductions than would have been the case if he made a true return of his total income, that fact affords no defence to a liability to the penalty prescribed under section 30 of the Income-tax Act, namely, to forfeit the sum of £20 and treble the tax taxable in respect of all the sources of his income.

ASSOCIATED INSULATION PRODUCTS, LTD. *v.* GOLDER (H. M. INSPECTOR OF TAXES), (1944) 2 All.E.R. 203 (C.A.).

Income-tax—Dividend declared by foreign corporations but payable after four years with interest—Assessability of shareholders—Appropriate period.

If a resolution provided for a distribution by way of dividend not of money but of money's worth, the income-tax due in respect of it would be not on the money figure of interest payable on each share, but on the market value of the certificate (of indebtedness issued by the company for such dividend made payable with interest four years thereafter) on the date of their distribution multiplied by the number of shares held. But where the reality of the transaction is the declaration of a money dividend payable not presently, but only on a future date (four years after) then it follows that till the due date arrived and payment was in fact received by the shareholder no income can be said to have arisen from the possession of foreign shares.

(1944) 1 All.E.R. 533, affirmed.

Re HURL-HOBBS, (1944) 2 All.E.R. 261 (C.A.).

Local Government—Borough Council—Disallowance by auditor of additional payments to a contractor—Appeal—Contractor concerned not a "person aggrieved" who has a right to appeal.

Where the district auditor had disallowed certain additional payments to a contractor as contrary to law and surcharged them to the councillors responsible for the decision, the contractor cannot be said to be a person aggrieved within the meaning of section 229 (1), Local Government Act, 1933, and therefore he has no right of appeal.

OFFICE CLEANING SERVICES, LTD. *v.* WESTMINSTER OFFICE CLEANING ASSOCIATION, (1944) 2 All. E.R. 269.

Trade name—Passing off—" Office Cleaning Services " and " Office Cleaning Association"—Descriptive names and sufficiently-distinctive.

Where the words " office cleaning," which are descriptive, have been incorporated by the plaintiffs in their name " Office Cleaning Services " and there has been no deliberate intention to deceive on the part of the defendants in the assumption of the trading style of " Office Cleaning Association," unless the plaintiffs can establish a monopoly of the use of those words on the ground that they have acquired a secondary or subsidiary meaning they cannot obtain such a monopoly by reason of the fact that there is some risk of confusion if those words are used by another. In the absence of any fraudulent intention, a small differentiation is sufficient to defeat the plaintiffs' claim. The difference between the words " services " and " Association " is sufficient to distinguish the defendants' business from the plaintiffs' who cannot therefore restrain the use of the name by the defendants.

YOUNG *v.* BRISTOL AEROPLANE CO., LTD., (1944) 2 All.E.R. 293.

Precedents—Court of Appeal—Bound by previous decisions of itself and of Courts of co-ordinate jurisdiction —Full Court of Appeal and division Court—Powers.

A full Court of the Court of Appeal has no greater powers than any division of the Court. The Court of Appeal is bound to follow previous decisions of its own as well as those of Courts of co-ordinate jurisdiction. The only exceptions to this rule are : (1) The Court is entitled and bound to decide which of two conflicting decisions of its own it will follow. (*ii*) The Court is bound to refuse to follow a decision of its own which though not expressly overruled, cannot in its opinion stand with a decision of the House of Lords. (*iii*) The Court is not bound to follow a decision of its own if it is satisfied that the decision was not given *per curiam.*

R. *v.* GRANT, (1944) 2 All.E.R. 311 (C.C.A.).

Criminal trial—Evidence of one prisoner against another—When admissible.

It is not competent to call as prosecution witnesses other prisoners who are themselves jointly charged with the same offence ; in any event it is most undesirable. It is quite contrary to the spirit in which the criminal law of the country is administered. In the case of an indictment of two or more persons one prisoner may give evidence for the Crown against a co-prisoner, (1) where a *nolle prosequi* has been entered ; (2) where a verdict of acquittal has been given: or (3) when though jointly indicted he is not being tried with the prisoner against whom he gives evidence.

R. *v.* SORSKY, (1944) 2 All.E.R. 333 (C. C. A.).

Controlled goods—Limitation of Supplies Order (1940)*—Agreement to sell to quota holder and then undertaking to sell the goods as agent of that quota holder—Contravention of the order—Conspiracy to contravene terms of order—Charge of—*Mens rea*—If necessary.*

A company controlled by *B* dealt in clothing and similar material. During 1940 much of their stock was destroyed by enemy action with the result that they were left with no stock of goods, but by virtue of their trading in the standard period, they had the right to deal in goods and the company owned the quota for such goods. *S* who owned a similar business held large stocks of goods but lacked the necessary quota to enable his concern to sell to its unregistered customers as it desired. *B* and *S* met and agreed that *S* should sell to *B* the controlled goods and should sell as the agent of *B* those same goods to *S's* customers. That agreement was carried out. In this way controlled goods were in fact supplied to unregistered persons in excess of *B's* quota.

Held, (1) *B* was the supplier of the goods under the agreement and was guilty of a contravention of the limitation of supplies order. (2) Absence of *mens rea* was no defence to a charge of conspiracy to contravene the terms of the order.

MARSH *v.* COMMISSIONER OF POLICE AND ANOTHER, (1944) 2 All.E.R. 392 (C.A.).

Innkeeper's lien—Ring handed to innkeeper as security for bill—How far subject to the lien.

On 24th November, 1942, *N* was received as a guest at the R Hotel where he stayed until 29th November, 1942, incurring a bill for £66-6-11. On 25th November, 1942, he obtained from certain jewellers a ring on approval (of the larceny of which he was convicted on 12th January, 1943). On 28th November, *N* being unable to meet the hotel bill handed the ring to the hotel authorities as security for the payment of the bill. When the jewellers claimed the ring as the true owners the hotel proprietors claimed an innkeeper's lien on it.

Held, the innkeeper's lien attached to the ring when it was brought into the hotel. If a person takes jewellery to the hotel or obtains it when he arrives there or acquires it during his residence there

and takes it to the hotel there is no more reason why the lien of an innkeeper should not attach to that property than to the clothes which the guest takes with him.

(1944) 1 All.E.R. 161 (K.B.D.) : (1944) 1 K.B.D. 99, reversed.

Re DUPREE'S TRUSTS, (1944) 2 All.E.R. 443 (Ch.D.).

Charitable gift—Gift for promoting a chess tournament for boys under 21 years of age resident in a named city—Educational value and validity.

A donor wished to promote a chess tournament for the encouragement of chess playing, to be competed for annually by boys or young men under the age of 21 years resident in the city of Portsmouth, and to provide for prizes to be awarded in connection with the tournament and in furtherance of those wishes he transferred to trustees shares representing a sum of £5,000 the income of which was to be utilised for the purpose. The prizes were not to be paid in cash but were to be provided by the trustees for the benefit of the winners, as they might think fit, for the advancement in life of such winners.

Held, the nature of the game of chess is such as to encourage the qualities of foresight, concentration, memory and ingenuity. The game is essentially one which possesses an educational value and the benefit being confined to a well-defined area there is a good charitable trust.

BOOK REVIEWS.

RIGHTS OF WOMEN UNDER THE HINDU LAW, by J. R. GHARPURE, B.A., LL.B., F.R.S.A., published by the University of Bombay, 1943. Price Rs. 2-8-0.

Writers like J. S. Mill and H. S. Maine, have stated that the elevation or debasement of women is the surest test and the most correct measure of the civilisation of a people or an age. Tennyson expressed much the same idea in the language of poesy when he said:

"Woman's cause is man's; they rise or fall
Together, dwarfed or godlike, bound or free".

The sentiment is embodied most felicitously and altogether in a higher plane in the picturesque statement of Manu:

यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः

The ideal had however everywhere to experience the impact of hard and concrete facts of actual life. And in the process it suffered. The biological differences in the constitution of the sexes together with the ordering of society the world over on lines where physical strength and force formed the ultimate sanction have led to distinctions being made in regard to rights and duties, to the disadvantage of women. In the present book, which contains the first Sir Lallubhai A. Shah Lectures arranged by the University of Bombay and delivered by Professor Gharpure, an outline is given of the vicissitudes which women's status has undergone among Hindus through the succeeding ages, from the Vedic times to the present day, through the period of the Sutras, Smritis and Commentaries. The position of woman as daughter, wife and mother are carefully examined and a correct picture of the development of their rights given. Certain views of the author such as that there is no reason why a spinster cannot adopt, or that the prohibition of sagotra marriages was an innovation of the post-Vedic period, etc., may be debatable. The statement on page 33 that marriages where they are of an anuloma character are certainly valid has at least in Madras not been accepted, see *Subbaramayya* v. *Venkatasubbamma*, (1941) 1 M.L.J. 724. In a book published under such high auspices one would wish that typographical errors could have been altogether avoided. The publication is a valuable and welcome addition to the literature relating to women's rights.

THE TRANSFER OF PROPERTY ACT, by Messrs. Chitaley and Annaji Rao, 2nd edition, 1945. Published by the All India Reporter, Ltd., Nagpur, Vols. II and III.

The second volume deals with sections 54 to 104 and the third with sections 105 to 137 of the Transfer of Property Act. The law stated is as on the 1st September, 1944, and the 1st December, 1944, respectively in the two volumes. Along with the first volume they constitute an almost complete case-book on the subject. The comments on the sections are arranged under appropriate headings and are generally helpful. One or two suggestions may however be made. The need for note 25 citing two decisions of the Bombay High Court and in that form under section 60 is not easily discernible, in view of notes 27 and 28 to section 69. The conflict of judicial opinion in regard to the question whether where a first mortgagee of two items of property, one of which is the subject of a second

mortgage as well, releases the item not covered by the second mortgage, the second mortgagee can claim marshalling, disclosed by the decisions in A.I.R. 1938 Madras 503 on the one hand and I.L.R. 34 All. 606 and A.I.R. 1931 All. 625 on the other might have been appropriately adverted to at one place, while as it is, the first decision is cited under note 10 to section 56, the second under note 43 to section 60 and the third under note 19 to section 82. In regard to citations it looks as if it has become the settled policy of the A.I.R. publications to give only the A.I.R. references always, the I.L.R. references in regard to cases reported therein and references to provincial journals only if the decisions are not found reported elsewhere. Notwithstanding these, it may easily be conceded that the busy practitioner will always find the present publication extremely useful and convenient.

LABOUR AND FACTORY LEGISLATION IN INDIA, by H. M. Trivedi, B.SC., *Barrister-at-Law*, Published by N. M. Tripathi, Ltd.; Bombay, Price Rs. 15.

When Oliver Twist asked for more the beadle stood aghast at the temerity of the Poor House inmate. Ruskin's "bag-barons" expressed similar wonderment when the "rag-barons", the factory workers demanded better conditions. It has ever been the same. The whirlgig of time however brings on its revenges. The two great wars of this century have brought home as nothing else has done that labour must receive fair-play if it is to be kept fully mobilised and at an efficient level. It would make no difference whatever whether industries are to be nationalised or continued under private enterprise. Soviet Russia may have lessons to afford in this matter. Better standard of living for the workers, minimum wages, limitations of hours of work, housing facilities, maternity benefit, old age insurance, protection against sickness and unemployment, compensation for injuries sustained in the course of employment, employment of women and children, sweated labour, these and other cognate problems will have to be tackled with imagination and courage. Employment of women underground contrary to the spirit of international undertakings was recently brought to light by interpellations in the Legislature. Post-war planning is being seriously taken on hand in England and America, and the Beveridge Report has set a wholesome and useful ideal before the country in regard to the problem of social security. Government's handling of labour reform in the past has not revealed much vision nor provoked any enthusiasm. Many of the recommendations of the Whitley Commission have been shelved. In this state of affairs it would certainly be helpful to know what little has been done in the past and how much more remains to be achieved in the future by way of labour and factory reform. It is here that the present publication assumes great value. The book is laid in four parts. The first two deal with pre-war legislation—the Acts of the Government of India and the Government of Bombay till 1st September, 1939. The last two parts contain what may be called "war-time labour and factory legislation" consisting of Acts and Ordinances promulgated after 1st September, 1939. The rules issued under the various Acts as well as important notifications are also given. The Introduction indicates briefly the main features of the Beveridge plan and contains an interesting discussion of the problem of social legislation as it affects our country. It is easy to endorse the words of Dr. Ambedkar in his Foreword that the book will prove very useful to all those who are in any way connected with labour administration of factories, mines, railways, etc., as well as to the members of the legal profession. We cordially welcome the publication.

LAW OF HOARDING AND PROFITEERING, by Mohammud Daud, M.A., LL.B., Inspector (Hoarding and Profiteering Prevention), Lucknow, 1945, Retail Price Rs. 5; Distributors, The Universal Publishers, Ltd., Hazratganj, Lucknow.

Hoarding and profiteering are twin evils resulting from abnormal economic conditions, and have contributed to the growth of what is familiarly known as the "black-market". To ensure an equitable distribution of essential articles and to make them available at basic rates, the Hoarding and Profiteering Ordinance of 1943, was promulgated. Experience acquired in working its provisions has brought to light various loopholes which have to be covered before the measure could produce beneficent results or successfully worked Amendments to the Ordinance have been from time to time made for this purpose and quite a large number of notifications, orders and instructions have also been issued by the Central Government. The present volume is intended to serve as "a sort of propaganda book". One of its chief merits is that it accumulates and presents all the copies of amended as well as un-amended notifications thereby enabling one to know the law in regard to the matter as it stood at any particular point of time. The notifications issued so recently as March also find a place. The author has given short explanatory notes to each section of the Ordinance which coming from one concerned with its administration is bound to be valuable, particularly to lay people. With greater care, typographical mistakes, of which there are plenty, could have been reduced. The Advocate-General of India is mentioned on p. 13 as D. N. Mitra. This is evidently a mistake for Sir Brojendra Lal Mitter. Again on p. 17 "Pallock" ought to be "Pollock". Notwithstanding these and similar mistakes the book is sure to prove useful to all.